

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 Steven J. Bank,
5 Plaintiff
6 v.
7 Nevada DPS et al.,
8 Defendants

Case No.: 2:16-cv-01255-JAD-GWF

**Order Adopting Report and
Recommendation, Denying Motion for
Preliminary Injunction, and Dismissing
Case**

[ECF Nos. 6, 7]

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10 Steven Bank brings this civil-rights action, alleging that the defendants—who include law
11 enforcement officers, Eighth Judicial District Court Judges, and Nevada’s Governor—violated his
12 First Amendment right to petition the court by precluding him from obtaining pauper status to sue to
13 quiet title to the property he’s squatting in.¹ Bank also moves for a preliminary injunction.²
14 Magistrate Judge George Foley granted Bank’s request for pauper status in this action, recommends
15 that Bank’s claims against the judges for damages be dismissed with prejudice, that his claim for
16 injunctive relief against Judge Barker be dismissed based on *Younger* abstention, and that his motion
17 for preliminary injunction be denied. He also dismissed all remaining claims without prejudice and
18 with leave to amend. Bank’s amended complaint was due May 22, 2017, and Judge Foley’s R&R
19 warned that if he failed to file an amended complaint and cure the deficiencies in his claim, “the
20 Court will recommend that the complaint be dismissed with prejudice.”³ His objections to the report
21 and recommendation were due by May 14, 2014.
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25 ¹ ECF No. 1.

26 ² ECF No. 6.

27 ³ ECF No. 7 at 5.

1 Bank filed no objections and no amended complaint.⁴ “[N]o review is required of a
2 magistrate judge’s report and recommendation unless objections are filed.”⁵ I adopt the magistrate
3 judge’s report and recommendation, dismiss this case with prejudice, and deny the motion for
4 preliminary injunction as moot.

5 Discussion

6 District courts have the inherent power to control their dockets and “[i]n the exercise of that
7 power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁶ A court
8 may dismiss an action based on a party’s failure to prosecute an action, failure to obey a court order,
9 or failure to comply with local rules.⁷ In determining whether to dismiss an action on one of these
10 grounds, the court must consider: (1) the public’s interest in expeditious resolution of litigation; (2)
11 the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
12 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
13 alternatives.⁸

14 The first two factors, the public’s interest in expeditiously resolving this litigation and the
15 court’s interest in managing its docket, weigh in favor of dismissal. It appears that Bank has
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17 ⁴ The court’s docket reflects that the Order and R&R (ECF No. 7) was mailed to Bank on 4/25/17
18 but returned as undeliverable. The document was resent to the address noted on Bank’s motion for
19 preliminary injunction (ECF No. 6), but that mailing was also returned as undeliverable. See ECF
Nos. 8, 9.

20 ⁵ *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); see also *Thomas v. Arn*, 474
21 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

22 ⁶ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

23 ⁷ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local
24 rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply
25 with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir.
26 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court
apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for
failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
(dismissal for lack of prosecution and failure to comply with local rules).

27 ⁸ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130; *Ferdik*,
963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

1 abandoned this case and has failed to comply with his obligation as a litigant to keep the court
2 apprised of his mailing address. This conduct makes it difficult for this court to expeditiously
3 resolve this case in any other manner and effectively manage its docket.

4 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
5 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered
6 by the court or prosecuting an action.⁹ A court's warning to a party that its failure to obey the court's
7 order will result in dismissal satisfies the fifth factor's "consideration of alternatives" requirement.¹⁰
8 Bank was clearly warned that his failure to file a timely amended complaint could result in the
9 dismissal of this case with prejudice.¹¹ Local Rule IA 3-1 also imposes a clear obligation on pro se
10 parties to "immediately file with the court written notification of any change of mailing address"
11 with the caveat that "[f]ailure to comply with this rule may result in the dismissal of the action . . . or
12 other sanctions"¹² The fourth factor—the public policy favoring disposition of cases on their
13 merits—is greatly outweighed by the factors favoring dismissal here. And because I am dismissing
14 this action with prejudice, leaving no claim remaining, I accept Judge Foley's recommendation in
15 this regard, too, and deny the motion for preliminary injunction.

16 Conclusion

17 Accordingly, with good cause appearing and no reason to delay, IT IS HEREBY ORDERED,
18 ADJUDGED, AND DECREED that Judge Foley's report and recommendation [ECF No. 7] is
19 **ACCEPTED and ADOPTED; this case is DISMISSED with prejudice;** and Bank's motion for a
20 preliminary injunction [ECF No. 6] is **DENIED**. The Clerk of Court is directed to enter judgment
21 . . .

24 ⁹ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

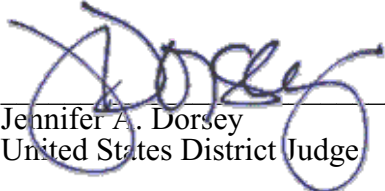
25 ¹⁰ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

26 ¹¹ ECF No. 7 at 5.

27 ¹² L.R. IA 3-1.

1 accordingly and **CLOSE THIS CASE.**

2 DATED June 1, 2017

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6 Jennifer A. Dorsey
7 United States District Judge
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